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No. 109, Original

FILED
JAN 7 1989
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

October Term, 1988

STATE OF OKLAHOMA and
STATE OF TEXAS,
Plaintiffs,

v.

STATE OF NEW MEXICO,
Defendant.

NEW MEXICO'S MOTION FOR LEAVE TO FILE SUPPLEMENTAL ANSWER, MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO FILE SUPPLEMENTAL ANSWER, AND SUPPLEMENTAL ANSWER

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January 6, 1989

R. VERGARA PRINTING COMPANY · SANTA FE, NEW MEXICO

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NEW MEXICO'S MOTION FOR LEAVE TO FILE SUPPLEMENTAL ANSWER

New Mexico requests permission to file its Supplemental Answer pursuant to Rule 15(d), Fed. R. Civ. P., and Rule 9.2, Rules of the Supreme Court of the United States. The Court granted the unopposed motion by Oklahoma and Texas for leave to file a Supplemental Complaint on December 12, 1988. The allegations raised in the Supplemental Complaint assert a new claim for relief and therefore require response by New Mexico and raise the need for New Mexico to state a supplemental affirmative defense. Because the plaintiffs object to this motion, the grounds in support of the motion are set forth more fully in the accompanying memorandum.

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NEW MEXICO'S MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO FILE SUPPLEMENTAL ANSWER

Rule 9.2 of the Rules of the Supreme Court of the United States refers to the Federal Rules of Civil Procedure to guide practice in original actions in this Court. The philosophy of Rule 15 of the Federal Rules of Civil Procedure is that amendments of the pleadings are to be freely granted. *Foman v. Davis*, 371 U.S. 178, 182 (1962). "Rule 15(d) of the Federal Rules of Civil Procedure plainly permits supplemental amendments to cover events happening after suit . . . . Such amendments are well within the basic aim of the rules to make pleadings a means to achieve an orderly and fair administration of justice." *Griffin v. County School Board of Prince Edward County*, 377 U.S. 218, 227 (1964).

Leave to file a supplemental pleading under Rule 15(d) is within the discretion of the Court and should be freely granted when to do so will promote the justiciable disposition of the case without causing undue prejudice. *Bates v. Western Electric*, 420 F.Supp. 521, 525 (E.D. Pa. 1976). *See also* 3 *Moore's Federal Practice* ¶ 15.16[2] at 15-179 (1988). Rule 15(d) applies to defensive pleadings as well as to complaints. *Harbeson v. Parke Davis, Inc.*, 746 F.2d 517, 520 (9th Cir. 1984); *Weekes v. Atlantic National Ins. Co.*, 370 F.2d 264, 271-72 (9th Cir. 1966). Rule 15(d) motions should be viewed with the same liberal principles applicable to motions to amend under Rule 15(a). *Davis v. Piper Aircraft Corp.*, 615 F.2d 606, 613 (4th Cir. 1980); *Soler v. G & U, Inc.*, 103 F.R.D. 69, 73 (S.D.N.Y. 1984). The rules relating to amended and supplemental pleadings were promulgated to provide the maximum opportunity for each claim to be decided on its merits rather than on procedural niceties. *Hardin v. Manitowoc-Forsythe Corp.*, 691 F.2d 449, 456 (10th Cir. 1982).

A responsive pleading presumably will not be necessary when the supplemental pleading does not contain anything that deviates from the original pleading; where, however, a new claim is added by the supplemental pleading, a response is desirable. *Cf. Owens-Illinois, Inc. v. Lake Shore Land Co.*, 610 F.2d 1185, 1188-89 (3d Cir. 1979). Requests to supplement the pleadings, like motions to amend, should be freely granted to permit the economic resolution of all related disputes between the parties. *Coca-Cola Bottling Co. of Elizabethtown v. Coca Cola Co.*, 668 F.Supp. 906, 922-23 (D. Del. 1987). Where the contents of the proposed pleadings are continuations of those things originally alleged, it is proper to file an amended, rather than supplemental, complaint. *United States v. International Bus. Machines Corp.*, 66 F.R.D. 223 (S.D.N.Y. 1975). In any case, whether a pleading is denominated "amended" or "supplemental" is of less importance than the substance of that pleading and the general policy of Rule 15 to facilitate judicial economy. *See, e.g., Griffin*, 377 U.S. at 226-27; *Foman*, 371 U.S. at 181-82.

The Court granted plaintiffs' Motion for Leave to File Supplemental Complaint on December 12, 1988. New Mexico did not object to plaintiffs' motion in its response, which also requested leave to file a supplemental answer. However, that latter request was not formally before the Court at the time; by the accompanying motion, New Mexico now brings this request to the Court's attention. The allegations raised in the Supplemental Complaint require response by New Mexico and raise the need for New Mexico to state a supplemental affirmative defense.

The third and fourth sentences of paragraph 1 of the Supplemental Complaint alter the meaning of the Complaint. The Complaint, in paragraph 9, defines the limitation in Article IV(b) of the Canadian River Compact (Compact) as providing "that the amount of conservation storage in New Mexico, or reservoir storage capacity available for impounding those waters [i.e., all waters originating in the drainage basin of the Canadian River in New Mexico below Conchas Dam], cannot exceed an aggregate total capacity of two hundred thousand (200,000) acre-feet." Paragraph 12 of the Complaint similarly defines the limitation in Article IV(b). The thrust of the Complaint is that any storage capacity available for impounding waters originating below Conchas Dam in excess of 200,000 acre-feet is in violation of Article IV(b). The third and fourth sentences of paragraph 1 of the Supplemental Complaint depart from the Complaint by alleging that reservoir capacity in place below Conchas Dam in excess of 200,000 acre-feet is in violation of Article IV(b), regardless of whether the reser-

voirs store water originating above or below Conchas Dam. In its Supplemental Answer, New Mexico denies that New Mexico has exceeded in any way the limitation of Article IV(b) of the Compact, which limits conservation storage available for impounding water originating in the drainage basin of the Canadian River below Conchas Dam in New Mexico, not the location or design capacity of storage facilities. Article IV(a) of the Compact gives New Mexico free and unrestricted use of all waters originating above Conchas Dam.

Paragraph 2 of the Supplemental Complaint contains entirely new allegations not found in the Complaint and dealing with matters in factual dispute between the parties. Paragraphs 3, 4, and 5 of the Supplemental Complaint also contain new allegations to which New Mexico has not yet had an opportunity to respond.

Plaintiffs were granted leave to file their Complaint against New Mexico on October 5, 1987. In the Complaint, the cause of action went to excess reservoir capacity. The Complaint contained no request for specific injunctive relief, such as alteration of dam structures to reduce physical storage capacity, or monetary damages for any claimed harm. The Supplemental Complaint asserts harm in that New Mexico is alleged to have stored waters in excess of the Article IV(b) limit in the Compact, thereby depriving plaintiffs of certain waters. This new allegation changes the original cause of action, excess reservoir capacity, by adopting a cause of action based on excess storage of water. The Supplemental Complaint seeks relief in the form of either an injunction against excess storage of water and to require delivery of water withheld or monetary damages, as well as consequential damages. Plaintiffs' Supplemental Complaint alleges asserted wrongs which they could have sued to prevent, but did not, prior to the enlargement

of Ute Dam. Accordingly, New Mexico asserts in its Supplemental Answer a supplemental affirmative defense of laches.

For all the above reasons, New Mexico requests that it be allowed leave to file the accompanying Supplemental Answer.

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NEW MEXICO'S SUPPLEMENTAL ANSWER

The Court granted plaintiffs' Motion for Leave to File Supplemental Complaint on December 12, 1988. This Supplemental Answer responds to the allegations raided in the Supplemental Complaint and states a supplemental affirmative defense in response to plaintiffs' allegations. New Mexico also reasserts the other defenses stated in its Answer.

1. Paragraph 1 of the Supplemental Complaint discusses plaintiffs' Complaint, and therefore states certain legal conclusions in sentences two and three which require no response. The paragraph is otherwise denied.

2. In response to paragraph 2, New Mexico denies all allegations, except that each of the certain reservoirs in New Mexico to which plaintiffs apparently refer has a storage capacity of 100 acre-feet or less. Consistent with formal actions of the Canadian River Commission, none of the States reports reservoirs with capacities of 100 acre-feet or less to the Commission. New Mexico further states that the amount of storage claimed in parapgraph 2 represents total capacity, not conservation storage capacity, and the total capacity of these reservoirs includes dead storage capacity and deposited sediment, neither of which is conservation storage. More than one-third of that total capacity is stock tanks that are not used for storage of water for subsequent release for any purpose.

3. New Mexico admits the first sentence of paragraph 3. New Mexico denies the allegations in the second and third sentences of paragraph 3.

4. Answering paragraph 4, New Mexico admits the first sentence. As to the second sentence, New Mexico admits that at water surface level 3787.0, the top of the spillway crest, Ute Reservoir could have impounded 246,600 acre-feet of water based on the 1983 sediment survey, but denies the remainder of the sentence. The third sentence is denied. In further response to the third sentence of paragraph 4, New Mexico states that Article IV(b) of the Compact does not limit the amount or place of storage of water arising above Conchas Dam in any manner. Accordingly, New Mexico's storage of water arising above Conchas Dam in reservoirs below Conchas Dam is not wrongful.

5. Answering paragraph 5, New Mexico denies the first sentence. New Mexico admits the second and third sentences, except the phrases "including 209,501 acre-feet of water in conservation storage" and "including 224,701 acre-feet of water in conservation storage," which are denied.

6. New Mexico denies all allegations of paragraph 6. New Mexico denies that its storage of water is or has been in any way wrongful or in violation of the provisions of the Compact. New Mexico denies that its storage of water has damaged plaintiffs by denying to them waters to which they are entitled, or in any other way.

7. New Mexico denies all allegations of paragraph 7.

8. New Mexico denies all allegations of paragraph 8.

SUPPLEMENTAL AFFIRMATIVE DEFENSE

Plaintiffs are barred by laches from seeking affirmative equitable or legal relief against New Mexico in regard to existing dam structures, impoundment of water, or past damages in either water or money, if any.

New Mexico also realleges the affirmative defenses set out in its December 4, 1987 Answer.

WHEREFORE, New Mexico respectfully requests that plaintiffs take nothing and that their Complaint and Supplemental Complaint be dismissed.

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